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DATE: Aug 29, 2003

TO: Mail Code - Amendment - No Fee  
Art Unit 3653

COMPANY: USPTO

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FROM: Mark D. Hansing

NUMBER OF PAGES (Including cover): 5

Please file the attached RESPONSE TO RESTRICTION REQUIREMENT for:

APPLICANT : WITTERN, Jr., Francis A., et al.  
SERIAL NO : 10/023,058  
FILED : December 13, 2001  
TITLE : APPARATUS AND METHOD FOR VENDING FROM A  
VENDING MACHINE

Grp./A.U. : 3653  
Examiner : Bollinger, David H.  
Conf. No. : 5518  
Docket No. : P05412US0

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**GROUP 3600**

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Mail Stop Non-Fee Amendment  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement mailed July 29, 2003, please enter the following response in the above-identified application.

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

MAILING

☐ deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Mail Stop Non-Fee Amendment, Alexandria, VA 22313-1450.

Date: 8/29/03

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Mark D. Hansing

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**REMARKS**

A restriction between method and apparatus claims has been required. Applicants' response is as follows.

**Traversal of Restriction Requirement**

The basis for restriction is MPEP § 806.05(e). It is alleged the process claimed in this application and the apparatus for its practice claimed in this application are distinct. The reason given is "[i]n this case the process as claimed can be practiced by another materially different apparatus." Office Action, page 2, numbered paragraph 2.

Reconsideration of the restriction requirement is respectfully requested for the following reasons:

1. To support a restriction requirement, there must be a showing that the apparatus claims are independent and distinct from the method claims. MPEP § 802.01 defines "independent" as "not dependent". A process and an apparatus used in the practice of the process are defined to be dependent. Id. Therefore, the sole basis for restriction is the allegation Applicants' claims 1-31 and 37-46 are distinct from apparatus claims 32-36.

2. MPEP § 802.01 defines "distinct" in the context of process and apparatus for its practice. To be distinct, the claimed inventions can be related but "capable of separate manufacture, use, or sale as claimed and are patentable (novel and unobvious) over each other." As stated by the Examiner, the MPEP requires there be a "materially different apparatus for supporting a distinctness holding." (*Emphasis added*). Reconsideration of this holding is respectfully requested because all method claims cannot be practiced by a materially different apparatus.

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3. Independent apparatus claim 32 defines a controller, a dispensing unit including a motor and helical product holder, a motor home position sensor, and a product sensor. It then includes limitations regarding the controller that relate to information obtained from a product sensor.

4. Independent method claim 37 defines a vending machine with a controller, a dispensing unit (including a motor, a motor positioning sensor, and a spiral product mover), and an optical product sensor. The method then describes various vend cycles and steps dependent upon information to the controller from the optical sensor.

5. Method claim 1 is broader than method claim 37 but also defines a protocol for controlling vend cycles based on sensing of product or not.

6. It is respectfully submitted that the focus on product sensing to control vend cycles is central to each independent claim. It is respectfully submitted that the claims are linked and therefore can be maintained and examined in one application because of this commonality. It is furthermore respectfully submitted that it has not been shown how materially different apparatus can be used to practice all the methods claimed.

#### **Provisional Election**

As required by the Office Action, the Applicants provisionally elect, with traverse, Group I claims 1-31 and 37-46 for prosecution in the present application, without prejudice to pursuing claims 32-36 in a related application if the restriction requirement is maintained.

#### **Conclusion**

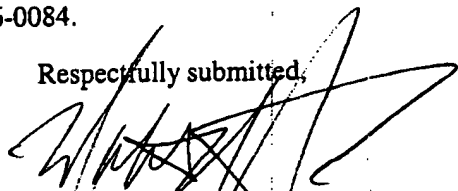
It is respectfully submitted that all matters raised in the Office Action have been addressed and that no other matters require response by Applicants at the present time. If this is believed incorrect by the Examiner, clarification is respectfully requested.

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No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



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